84-1421

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NO.

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

THADDEUS PUDLO,

Petitioner

vs.

CITY OF CHICAGO,
a municipal corporation,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO
THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

Dennis M. Doherty
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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

(a)

QUESTIONS PRESENTED FOR REVIEW

I.

Whether the food industry is a "pervasively regulated" industry such that warrantless inspections may be authorized by statute or ordinance.

II.

Whether petitioner's conviction for "refusing entry" to city inspectors is constitutionally permissible, where petitioner merely insisted that the inspectors get a warrant to inspect; and the Municipal Code, City of Chicago, does not have a specifically delineated penalty provision for refusing an inspection.

III.

Whether probable cause existed for the issuance of a search warant to inspect petitioner's food establishment where the complaint for search warrant recited no more than petitioner refused an inspection.

(b)

LIST OF PARTIES IN THE COURT BELOW

Thaddeus Pudlo, petitioner, was represented by attorney Dennis M. Doherty.

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(c)

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(d)

REFERENCES TO REPORTS OF OPINIONS

The Opinion of the Appellate Court of Illinois is reported: City of Chicago v. Pudlo, 123 Ill. App.3d 337, 462 N.E.2d 494 (1983). The Supplemental Opinion on Denial of Rehearing, is reported at same (1984). A copy of the Opinion is attached as Appendix A. A copy of the Supplemental Opinion is attached as Exhibit B.

The order of the Supreme Court of Illinois denying leave to appeal is not reported. It is attached as Appendix C.

(e)

STATEMENT OF JURISDICTIONAL GROUNDS

(i) The judgment of the Appellate Court was entered on December 30, 1983. A timely petition for rehearing was denied with Supplemental Opinion on May 7, 1984.

(ii) A timely peititon for leave to appeal was denied by the Supreme Court of Illinois on October 2, 1984.

(iii) (does not apply)

(iv) Jurisdiction of this Court is invoked under Title 28, U.S.C. §1257(e).

(f)

CONSTITUTIONAL PROVISIONS INVOLVED

Fourth Amendment:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATUTES

Where applicable, they are set out in the body of this petition.

(g)

ORDINANCES INVOLVED

Municipal Code, City of Chicago

Chapter 130, et seq.: "FOOD SANITATION"

130-6.1. It shall be unlawful for any person to engage in the business of a wholesale food establishment within the City of Chicago without obtaining a license to do so.

Every such license shall be posed in a conspicuous place in that part of the food establishment to which the public has access.

At the time of license application, the City Clerk shall issue to each applicant a copy of that portion of the Muncipal Code of Chicago and Board Health rules and regulations relating to wholesale food establishments.

130.6.4. All foods to be used, prepared, cooked or displayed or sold, offered for sale or stored in a wholesale food establishment shall be from sources approved by the health authorities of the point of origin, and must be clean, wholesome and free from spoilage, free from adulteration and misbranding, and sale for human consumption.

The standards for judging wholesomeness for human food shall be those now in use by the United States Department of Health, Education, and Welfare, Food and Drug Administration, or those hereafter promulgated.

Only pasteurized dry eggs or dry egg products shall be used and, if reconstituted, they shall be heated at 140° F., or above, prior to usage.

All ice cream, ice milk, frozen desserts or milk, stored or sold, or mix used in the manufacture of frozen desserts shall comply with Chapter 139 of the Municipal Code of Chicago, and shall be manufactured from milk or milk products from sources approved by the Board of Health. Only

Grade "A" pasteurized milk, milk dry products, concentrated milk, concentrated milk products, dry milk, dry milk products, or any other milk product, as defined in Chapter 154 of the Municipal Code of Chicago, shall be used as food ingredients.

All milk and fluid milk products shall be sold in the individual original container in which they were received from the distributor. All milk and milk products and cream shall be kept at a temperature of 45° F., or less until sold or used.

Shellfish, oysters, clams, and mussels shall be obtained from a source approved by the United States Public Health Service Food and Drug Administation and certified by the state of origin. Shell stock and shucked shellfish shall be kept until sold in the containers in which they were received.

All meats, meat food products, poultry and poultry products used in cooking, offered for sale, sold, or prepared shall be plainly marked, tagged, or stamped to indicate that they have been obtained from sources inspected and approved by the United States Department of Agriculture, State of Illinois, or the Chicago Department of Health.

All ice shall be obtained from a source approved by the Department of Health and stored in such a manner as to prevent contamination.

All bottled or packed portable water shall be of a safe, santiary quality and from an approved source.

All hermetically sealed foods shall have been processed in approved food processing establishments. The use, preparation, display, sale or storage of home canned foods is prohibited. No

other foods which have been processed in a private home or other than in an approved food processing establishment shall be stored, used or kept for sale in a food establishment.

130-9. The Department of Health shall make an inspection of all retail food establishments (as defined in §130-2), food dispensing establishments as defined in §130-3), mobile food dispensers (as defined in §130-4), automatic food vending machine operator's establishment (as defined in §130-5.1), wholesale food establishments (as defined in §130-6), and bottled water plants (as defined in §130-8), at least once every six months and as often as necessary to determine that all requirements of this code are being complied with. Wholesale itinerant food dealer (as defined in §130-7), which shall be inspected when the existence of insanitary food handling conditions are apparent, and as often as necessary to determine that all requirements of this code are complied with. A report of such inspections shall be made and filed in the records of the Department of Health. Whenever the Department of Health makes an inspection of an establishment, it shall record the finding of such inspection on an inspection report provided for this purpose. Reports shall be signed by both the inspector and the establishment representative. One copy of the inspection report shall be left with the management of the establishment and shall be posted by the Department of Health upon the inside wall of the establishment available to the public, and it shall not be defaced or removed by any person except the Department of Health. Failure to conform with this requirement may result in the suspension of the license.

A representative of the Department of Health,

after proper identification, shall be permitted to enter, at any reasonable time, any establishment within the City of Chicago for the purpose of making an inspection to determine compliance with this ordinance. He shall be permitted to examine the records of the establishment to obtain pertinent information relating to food, water, beverages and supplies received or used, and persons employed.

When the Department of Health finds a violation of any requirements of this code relating to health and sanctions, it may make a second inspection after a lapse of whatever time it deems necessary for the correction of the violation. Provided, however, that whenever an inspection indicates that the conditions in the establishment create an imminent hazard to the public health, the license may be immediately suspended.

After receipt from the Department of Health of a notice of violation by the establishment, as evidenced by said inspection report, but before the allotted time has elapsed for compliance, the establishment may require a hearing at the offices of the Department of Health to file exceptions to the inspection report or may request an extension of the time allowed for compliance. Such appeal must be filed within twenty-four hours of the receipt of such notice of violation.

If, upon such second inspection, it is found that the establishment is in continued violation of this chapter, the license may be temporarily suspended by the Department of Health.

Upon suspension of the license, all operations shall cease at once, and the license shall be removed from the establishment and delivered to the Department of Health.

The Chicago Police Department shall be notified of the suspension of the license and shall enforce the cessation of all operations.

The holder may, at any time, make application for a restoration of the license. Within twenty-four hours after receipt by the Department of Health of such application, accompanied by a statement signed by the licensee indicating that the provision or provisions previously violated have been complied with, a reinspection shall be made to assure the Department of Health that the applicant is complying with requirements of this code. When the reinspection indicates full compliance, the license shall be restored, and the Chicago Police Department so notified.

Upon a record of repeated violations of this chapter, or repeated suspensions of the license, the Board of Health may recommend the revocation of the license in accordance with the requirements of Chapter 101-27 of the Municipal Code.

Nothing in this section shall preclude the institution of any court action based on any violation of this code.

130-11. Any person who violates, or who resists the enforcement of any of the provisions of this chapter shall be fined not less than two hundred dollars nor more than one thousand dollars for each offense, and a separate and distinct offense shall be deemed to have been committed for each and every day on which any person shall be guilty of such violation.

(h)

STATMENT OF THE CASE

I.

On June 22, 1981, John R. Colletti, a food inspector with the Department of Consumer Services for the City of Chicago (hereinafter Colletti) went to Pudlo Food Products, 1651 W. Hubbard St., Chicago, Illinois, and requested that petitioner Thaddeus Pudlo, one of the proprietors of Pudlo Food Products (hereinafter petitioner), submit to a warrantless inspection of the pickle processing plant located thereat. (R. 2-3).

> (Prosecutor): And what did he (petitioner) tell you?
> (Colletti): He said, 'No, sir. I will not allow you in my establishment, constitutional right.'
> (Prosecutor): Did he tell you to go out and get a warrant?
> (Colletti): That's what he said.
> (Prosecutor): Tell the Judge what he said.
> (Colletti): The gentleman we spoke to, Mr. Pudlo, stated he would not let us in without a court order. (R. 3)

Colletti thereafter left, and on July 1, 1981,

petitioner was arrested for refusing an inspection pursuant to Chapter 130, §9, of the Municipal Code City of Chicago, (infra, pp. 8-10), which authorizes warrantless inspections of food establishments in Chicago. (R. 3)

Petitioner was convicted by a jury of refusing an inspection pursuant to Chapter 130, §9, and fined, $1,000.[1] (C-103; R. 673)

II.

On July 15, 1981, the City of Chicago applied to the Circuit Court of Cook County for the issuance of a search warrant to search Pudlo Food Products. (R. 16-19) A duplication of the complaint for search warrant, and the search warrant ultimately issued, are attached, respectively, as App. D and App. E. The facts stated in the complaint for search warrant as probable cause for

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[1] Chapter 130 contains only one penalty provision (Chapter 130, §11; infra, p. 10), which is general in nature and applies to any violation under Chapter 130. The chapter does not provide independent violation provisions.

the issuance of search warrant were that petitioner "refused entry to the premises . . . stating that a Search Warrant should first be obtained." (App. C) In applying for the warrant the City represented to the Court that petitioner "got a license in 1979 and 1980", and the "license was suspended . . . [f]or unsanitary conditions" and petitioner "never applied for reinstatement." (R. 16) The search warrant issued, and a search thereafter uncovered evidence of unsanitary food practices at Pudlo Food Products. (R. 271-398; 580-616)

Petitioner was convicted by a jury of operating without a license (Chapter 130, §6.1); and for maintaining unsanitary premises (Chapter 130, §6.4). Fines for these offenses were suspended.

III.

Petitioner below contended that his conviction under Chapter 130, §9, for "refusing entry," was constitutionally impermissible inasmuch as Chapter

130, §9, is unconstitutional for authorizing warrantless inspections of food establishments in Chicago. Petitioner further contended that the search warrant should have been quashed because there was no probable cause for the issuance of same. Petitioner further contended that his conviction for refusing an inspection was constitutionally impermissible, as he had a right to insist that the inspectors obtain a warrant to search.

The court below held that warrantless inspections of food establishments are constitutional. In an issue of first impression in Illinois, the court below decided that "based on the long-standing and pervasive regulation of the food industry" warrantless inspections are constitutional under the "Biswell-Colonnade" exception, authorizing a warrantless administrative search of a "pervasively regulated business." (App. B, pp. 4-7)

The judgment of the court below did not address the propriety of defendant's conviction for

refusing an inspection, where he contended that he had a right to insist that the inspectors obtain a warrant to search.

(i)

RAISING THE FEDERAL QUESTIONS

The questions presented for review in this court were presented below. The issues were addressed by the appellate court (App. A & B), and the Supreme Court of Illinois denied leave to appeal. (App. C)

(j)

REASONS FOR GRANTING THE WRIT

I.

SHOULD THE FOOD INDUSTRY BE GIVEN "CLOSELY REGULATED" STATUS?

In a case of first impression in Illinois, the court below held that the food industry is a "pervasively reglated" business such that warrantless inspections are constitutionally permissible under the "Biswell-Colonnade" exception, authorizing the

warrantless administrative search of a "pervasively regulated business." (App. A, pp. 7-10)

There has been no clear pronouncement from this Court that the food industry is such a "pervasively regulated" business that warrantless inspections are permissible. This Court has deemed the liquor industry (Colonnade Corp. v. United States (1970), 397 U.S. 72); the firearms industry (United States v. Biswell, (1972), 406 U.S. 311); and the mining industry (Donovan v. Dewey, (1981), 452 U.S. 594); to be such "pervasively regulated" businesses.

Fire inspections (See v. Seattle, (1967), 387 U.S. 541); housing inspections (Camara v. Municipal Court (1967), 387 U.S. 523); and workplace inspections (Marshall v. Barlow's, Inc., (1978), 436 U.S. 307); may only be "compelled through prosecution or physical force within the framework of a warrant procedure." See, supra, 387 U.S. at 544.

There is a division of authority in the cases

below as to whether the food industry deserves this "closely regulated" status authorizing warrantless inspections. To resolve this unsettled area of federal law, this Court should issue a writ of certiorari to review the judgment of the court below.

But for the instant case, all of the cases discussing the status of the food industry in this context, arose under the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §301, et seq.

Section 374 of that Act authorizes warrantless inspections of "any factory, warehouse, or establishment in which food, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into interstate commerce. . . ."[2]

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[2] Section 704 of the Act, 21 U.S.C. §374, provides in pertinent part:

(a) For purposes of enforcement of this chapter, officers or employees duly designated by the Secretary, upon presenting appropriate credentials and a written notice to the owners, operator, or agent in charge, are authorized (1) to enter, at reasonable times, any factory, warehouse, or establishment in which food, drugs, devices or cos-

--fn. cont'd, next page

Sections 331(f) and 333 of the Act, provide specific penalty provisions subjecting one to criminal sanctions for denial of consent to inspect.[3]

There has been considerable confusion in the cases below construing these provisions to the extent that the decisions reach contrary conclusions. It is apparent that some lower courts have erroneously concluded that the enactment of §374, ipso facto, has elevated the food industry to the

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[2] (cont'd)
metics are manufactured, processed, packed, or held for introduction into interstate commerce or after such introduction, or to enter any vehicle being used to transport or hold such food, drugs, devices, or cosmetics in interstate commerce; and (2) to inspect, at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment, or vehicle and all pertinent equipment finished and unfinished materials, containers, and labeling therein.

[3] 21 U.S.C. §331(f) provides:

The following acts and the causing thereof are prohibited:

(f) The refusal to permit entry or inspection as authorized by §374 of this title.

21 U.S.C. §333(a) provides:

Penalties-Violations of §331 of this title. Section 331 of this title shall be imprisoned for not more than one year or fined not more than $1,000 or both.

status of "pervasively regulated." The Federal Food, Drug and Cosmetic Act encompasses many, many enterprises, and industries. The enactment of the Act does not elevate each of them to "pervasively regulated" status.

In the Senate report accompanying the Food, Drug and Cosmetic Act inspection provision, the Committee on Labor and Public Welfare stated:

> This legislation does not propose that food and drug inspectors shall have the power of arrest, or the power to use force in order to gain admission to a factory or otherwise carry out an intended inspection ... [t]he bill authorizes entry and inspection but does not authorize the inspector to enter the establishment by force. The owner is on notice, however, that he must permit a reasonable inspection. If he refuses such an inspection, he is in violation of the act.
>
> Senate Report No. 712, July 29, 1953, accompanying H.R. 5740, 1953 U.S. Code, Congressional and Administrative New Vol 2, pp. 2198-2201. (United States v. Litvin, 353 F.Supp. 1333, 1337 (D.D.C. 1973)

Accordingly, lower courts have correctly held that §374, providing for warrantless inspections "is authorized only when there is a valid consent." United States v. Jamieson-McKanes Pharma-

ceuticals, 651 F.2d 532, 540 (8 Cir. 1981), cert. den., 455 U.S. 1016 (deeming the drug industry to be a closely regulated business) If a "defendant refuse[s] entry, the inspectors [have] no right to enter the storeroom. . ." United States v. Litvin, 353 F.Supp. 1333, 1338 (D.D.C 1973); see also: United States v. Kendall, 324 F. Supp. 628, 630 (D. Mass. 1971). Cf. United States v. Thriftmart, Inc., 429 F.2d 1006, 1010 (9 Cir. 1970) Accordingly, "where entry and inspection, required by the statute, are refused, an administrative search warrant issued after a showing of probable cause is necessary." United States v. Roux Laboratories, 456 F.Supp. 973 976 (M.D. Fla. 1978) (implicitly deeming the hair-dye industry not to be a closely regulated business) Cf. Colonnade Catering Corp. v. United States, 397 U.S. 72 (1970).

The confusion has arisen from those cases which have erroneously concluded that §374 has elevated the food industry to "closely-regulated" status.

At least four such cases permeate the reported decisions in this area: United States v. New England Grocers Supply Co., 488 F.Supp. 230, 238 (D. Mass. 1980) (". . . neither a warrant or consent was required to conduct the inspections of defendants' warehouse."); United States v. Acri Wholesale Grocery Company, 409 F.Supp. 529, 533 (S.D. Iowa, C.D. 1976) (". . . although it is an unnecessary basis for an inspection, the defendants fully consented to the inspections by FDA."); United States v. Business Builders, 354 F.Supp. 141, 143 (N.D. Oklahoma 1973)(". . .consent is immaterial . . ."); United States v. Del Campo Baking Mfg. Company, 345 F.Supp. 1371, 1376 (D. Delaware 1972) ("the defendants could not have demanded a search warrant.")

Clearly, the New England, Acri, Business, and Del Campo decisions are in constrast to the decisions in Litvin, Jamieson, Kendall, Roux and Colonnade, as well as the legislative history of Section 374 (see Litvin, supra).

This Court's failure to thus define the applicability of the Fourth Amendement to those businesses encompassed by the Federal Food, Drug and Cosmetic Act,[4] now in the face of conflicting decisions below, leaves the area entirely unsettled.

The significance of the dichotomy to the case at bar is that the court below, having two contrasting bodies of law to choose from, chose to "agree with the reasoning of the courts in the New England Grocers and the Business Builders cases." (App. B, p. 5) As discussed above, these decisions erroneously presume that the mere enactment of §374 elevated the food industry to "pervasively regulated" status. The decisions relied on by the court below are in contrast to the legislative history of §374 and the body of decisions contrary to the New England Grocers and Business Builders cases.

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[4] In footnotes 3 and 4 to See v. Seattle, 387 U.S. 541 (1967), it is apparent that this Court reserved constitutional judgment on the Food, Drug and Cosmetic Act inspection provisions.

Notwithstanding this Court's failure to ever deem the food industry to be "pervasively regulated," an analysis of the ordinance in question reveals that the industries encompassed therein do not share that "history of government oversight" and "long tradition of close government supervision" (Marshall v. Barlow's, (1978), 436 U.S. 307, 313), attendant to those businesses deemed to be "pervasively regulated." The ordinance here permits warrantless inspections of "all retail food establishments. . . dispensing establishments. . . mobile food dispensers. . . automatic food vending machine operator's establishments. . . wholesale food establishments. . . and bottled water plants." (See Ch. 130, §9, infra, pp. 9-10) Thus, unlike the situation in New England, supra, 488 F.Supp. 230, the ordinance does not apply "to a particular industry" but to "a wide range of business establishments." 488 F. Supp. at 238.

In G.M. Leasing Corp. v. United States, 429 U.S. 530, at 353-54, 356-58, and Marshall v.

Bartlow's Inc., 436 U.S. 313-315, this Court made clear that the statutorily authorized "equivalent of a valid search warrant," applies only to "those commercial enterprises that historically, because of their special nature, have been subject to extensive federal regulation or licensing."

Assuming arguendo, that the food industry is a pervasively regulated business, Chapter 130-9 still does not provide a constitutionally adequate substitute for a warrant. The ordinance encompasses broad jurisdictional provisions and is not properly limited in scope. An ordinance in this context, to be constitutional, must authorize a "regulatory inspection system of business premises which is carefully limited in time, place and scope." United States v. Biswell, 406 U.S. at 315.

No one remotely connected with the food industry in Chicago is exempt. Everything from food to water is covered. Every outlet, whether retail or wholesale must submit to a warrantless

inspection. From the peanut vendor on the corner, to the giant supermarket complex, no warrant is required.

The inspections can occur at whim. The ordinance authorizes warrantless inspections "at least once every six months and as often as necessary to determine that all the requirements. . . are being complied with." Thus the ordinance does not "specifically defin[e] the frequency of inspections." Donovan v. Dewey, 452 U.S. at 604. They can occur "as often as necessary to determine."

The ordinance devolves almost unbridled discretion as to when to search and whom to search. Any "representative" can go "at any reasonable time" "as often as is necessary" to inspect without a warrant. As in Marshall v. Barlow's, Inc., 436 U.S. 307 (1978), the ordinance here does not provide any standards to guide inspectors, either in their selection of establishments to be searched, or in the authority, time, frequency, or scope of authority to conduct that search.

The food industry has never been deemed by this Court to be a "pervasively regulated" business subject to warrantless administrative inspections. There is a division of authority below in this area of law. The judgment of the Court below was in error insomuch as it held the food industry in Chicago to be "pervasively regulated." The ordinance in question should be held unconstitutional.

II.

PETITIONER'S CONVICTION FOR "REFUSING ENTRY" SHOULD BE REVERSED, WHERE PETITIONER MERELY INSISTED THAT THE INSPECTORS GET A WARRANT, AND THE MUNICIPAL CODE, CITY OF CHICAGO, DOES NOT HAVE A SPECIFICALLY DELINEATED PENALTY PROVIVISION FOR REFUSING AN INSPECTION.

In Camara v. Municipal Court, 387 U.S. 523, 539 (1967), it was held that it is one's "constitutional right to insist that (building) inspectors obtain a warrant to search and (one) may not constitutionally be convicted for refusing to consent to (an) insepction." The weight of authority in this regard makes clear that one may refuse to

consent, even in the face of a statute or ordinance, authorizing warrantless inspections. United States v. Jamieson-McKanes Pharmaceuticals, 651 F.2d 532 (8 Cir. 1981), cert. den., 455 U.S. 1016; United States v. Litvin, 353 F.Supp. 1333 (D.D.C. 1973); United States v. Kendall, 324 F.Supp. 628 (D. Mass. 1971); United States v. Roux Laboratories, 456 F.Supp. 973 (M.D. Fla. 1978); Cf. Colonnade Catering Corp. v. United States, 397 U.S. 72 (1970).

The distinction between the ordinance at bar and 21 U.S.C. §§331(f), 333 and 374, is that in the latter statute there exists an independent penalty provision for refusing inspection. Under 21 U.S.C. §§331(f) and 333(a), the specified violation of refusing an inspection authorized by §374, and carries up to a year imprisonment and $1,000 fine, or both.

The ordinance at bar does not put one on notice that refusing to consent to an inspection, by itself, is a violation of the ordinance. The

ordinance provides that the "Department of Health shall make an inspection. . . " The ordinance simply recites that a "representative of the Department of Health . . .shall be permitted to enter. . ." The penalty provision for Chapter 130 (Chapter 130, §11, infra, page 10), does not apply to any one particular section thereof, but applies generally to all of Chapter 130, entitled: "FOOD SANITATIONS." This penalty provision merely states that any person who "violates, or who resists the enforcement of any of the provisions of this chapter shall be fined. . . ." Nowhere in the ordinance is refusing an inspection proscribed in such terms, or any like terms. "The vice of vagueness in criminal statutes is the treachery they conceal either in determining what persons are included or what acts are prohibited." United States v. Cardiff, 344 U.S. 174 (1952) A criminal statute violates due process if it fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden, or if it is

so indefinite that it encourages erratic arrests and convictions. Calautti v. Franklin, 439 U.S. 379 (1979) Even a statute clear and precise may be overbroad if it prohibits constitutionally protected conduct. Grayned v. Rockford, 408 U.S. 104 (1972)

A litany of decisions reflect that one has a "right" to "insist" that inspectors secure a warrant before entry. Camara, supra; Colonnade, supra; Cf. Commonwealth v. Cadoret, 15 Mass.App. 654 (1983); see also: United States v. Jamieson-McKanes Pharmaceuticals, supra; United States v. Roux Laboratories, supra; United States v. Kendall, supra; United States v. Litvin, supra; United States v. Thriftimart, supra; United States v. Kramer, 418 F.2d 987 (8 Cir. 1969); United States v. Hammond Milling Co., 413 F.2d 608 (5 Cir. 1969); United States v. Stanack Sales Co., 387 F.2d 849 (3 Cir. 1968); United States v. Arnold's Pharmacy, 116 F.Supp. 310 (D.N.J. 1953); District of Columbia v. Little, 178 F.2d 13 (D.C.

C.A. 1949), affirmed, 339 U.S. 1.

Unless the act of refusing consent is particularly defined as a proscribed act (as in 21 U.S.C. §§§331(f), 333 and 334, and 18 U.S.C. §923(g) (see Colonnade, supra), petitioner's insistence that the inspectors get a warrant cannot amount to a crime or prohibited conduct.

III.

THERE WAS NO PROBABLE CAUSE FOR THE ISSUANCE OF A SEARCH WARRANT TO INSPECT PETITIONER'S FOOD ESTABLISHMENT WHERE THE COMPLAINT FOR SEARCH WARRANT RECITED NO MORE THAN PETITIONER REFUSED AN INSPECTION

Administrative entry, without consent, upon the portion of commercial premises which are not open to the public may only be compelled through prosecution or physical force within the framework of a warrant procedure. See v. Seattle, 387 U.S. 541 (1967) An administrative inspection warrant is to issue only upon some showing of probable cause. Probable cause in the criminal sense is not required. Marshall v. Barlow's, Inc., 436 U.S.

320 (1978)

The two alternative methods by which the less stringent standard of probable cause can be established are:

1. If specific evidence of an existing violation was presented;

or

2. If a showing was made that reasonable legislative or administrative standards for conducting such an inspection were satisified. (Marshall v. Barlow's, Inc., 436 U.S. at 320-21)

There is no showing of either in the complaint for search warrant or the search warrant at bar. (App. D and E) The refusal to permit an inspection, of course, does not provide the necessary probable cause therefor. However, the City of Chicago alleged no more in seeking the warrant, than petitioner refused entry to the inspectors.

The recitation that petitioner's license was suspended and never reinstated (App. A, page 4) is not evidence of an existing violation. The testimony of an inspector that "members of the public"

went into and out of petitioner's establishment "carrying packages" (App. A, page 8) has no significance in light of the fact that the "establishment" in question is a residential building at 1651 West Hubbard, Chicago, (R. 308); and the identity of any of these "members of the public" was not known by the inspectors. (R. 308)

Petitioner's motion to quash the search warrant (C-14) should have been sustained (R. 158), and all evidence flowing from the inspection should have been suppressed.

CONCLUSION

For the foregoing reasons, petitioner Thaddeus Pudlo prays that a writ of certiorari issue to review the judgment of the court below.

Respectfully submitted,

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App. A

First District
Filed December 30, 1983

No. 82-2256

CITY OF CHICAGO, a municipal corporation, Plaintiff-Appellee,	)	APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY
vs.	)	
THADDEUS PUDLO, and WALTER J. PUDLO, Defendants-Applennats.	)	HONORABLE PETER GEORGES, PRESIDING

JUSTICE CAMPBELL delivered the opinion of the court:

Following a jury trial, defendants Thaddeus Pudlo and Walter J. Pudlo were found guilty of violating chapter 130, sections 6.1, 6.4 and 9 of the Municipal Code of Chicago (Chicago, Ill., Municipal Code (1980) ch. 130, secs. 6.1, 6.4, 9) which regulates wholesale and retail food establishments in the city. The issues on appeal include: (1) whether chapter 130-9 of the Municipal Code which authorizes warrantless searches of food

establishments is unconstitutional; (2) whether the issuance of an administrative search warrant was proper; (3) whether lack of counsel at trial constituted reversible error; (4) whether trial errors deprived defendants of due process of law; (5) whether the trial court acted properly with respect to possible jury contamination; and (6) whether defendants are entitled to return of their seized weapons.

Three separate complaints were filed in this case. On July 1, 1981, Thaddeus Pudlo was charged with two violations of the Municipal Code. Count one alleged a violation of chapter 130-9 for refusing to allow an inspection of his food establishment. Count two alleged a violation of chapter 16-5 for obstructing an inspector in the performance of his duties. On July 15, 1981, a complaint was filed against both defendants charging them with three violations of the Municipal

Code. Count one alleged a violation of chapter 130-6.1 for failure to hold a license for the business; count two alleged a violation of chapter 130-6.1 and prayed for judgment finding a daily violation for not holding a license; count three alleged a violation of chapter 130-6.3 for failure to pay a truck license fee. The third complaint was filed on July 15, 1981, against both defendants charging them with three additional violations of the Municipal Code. Count one alleged a violation of chapter 130-6.16 for having a dog on the premises; count two alleged a violation of chapter 130-6.4 for unsanitary conditions on the premises; and count three alleged a violation of chapter 130-6.18 for rubbish on the premises.

On July 15, 1981, an inspection of defendant's business, Pudlo Food Products, was conducted by the Department of Consumer Services for the City of Chicago. [Department] The inspection was made

pursuant to the issuance of a warrant with the accompaniment of Chicago police officers. The record is unclear as to events transpiring before this date except that unsuccessful attempts were made to gain access to the defendant's premises for purposes of making an inspection.

John R. Colletti, Supervising Food Inspector for the Department, testified that he along with Inspector John Sharkey and Chicago police Officers, conducted the July 15, 1981, inspection of defendants' food establishment. Colletti enumerated his findings at trial and summarized those findings as follows: "And the place was not kept neat and clean." Inspector Sharkey and officers Eugene Seyfert and Judith Schultz corroborated Colletti's testimony regarding the condition of defendants' premises.

Defendants first argue that their convictions should be reversed because chapter 130-9 of the

Muncipal Code violates the fourth amendment of the United States Constitution because that chapter authorized warrantless searches of any establishment within the City of Chicago. The provision of chapter 130-9 pertinent to this case provides:

> "A representative of the Department of Health, after proper identification, shall be permitted to enter, at any reasonable time, any establishment within the City of Chicago for the purpose of making an inspection to determine compliance with this ordinance. He shall be permitted to examine the records of the establishment to obtain pertinent information relating to food, water, beverages and supplies received or used, and persons employed."

In light of the fact that the inspection in this case was conducted pursuant to a warrant, it

will not be necessary to reach the issue as to the constitutionality of warrantless searches under chapter 130-9.

Defendants' second argument is that because there was no probable cause to issue the search warrant, the trial court erred in denying defendants' motion to quash the warrant. It is clear that an administrative inspection warrant is to issue only upon showing a probable cause. (Donovan v. Federal Clearing Die Casting Company, (7th Cir. 1981), 655 F.2d 793.) Although the degree of probable cause that is required is unclear, (Burkart Randall Division of Textron, Inc. v. Marshall (7th Cir. 1980), 625 F.2d 1313), it is clear that probable cause in the criminal sense is not required for the issuance of an administrative inspection warrant. (Marshall v. Barlow's, Inc., (1978), 436 U.S. 307, 56 L.Ed.2d 305, 98 S.Ct. 1816). In the Barlow's case, the United States

Supreme Court held that "probable cause justifying the issuance of a warrant may be based not only on specific evidence of an existing violation but also on a showing that 'reasonable legislative or administrative standards for conducting an * * * inspection are satisfied with repsect to a particular [establishment].'" (436 U.S. 307, 320, 56 L.Ed.2d 305, 316, 98 S.Ct. 1816, 1824, citing Camara v. Municipal Court (1967), 387 U.S. 523, 538, 18 L.Ed.2d 930, 941, 87 S.Ct. 1727, 1736.)

In determining the reasonableness of a particular inspection, and in turn, the existence of probable cause for that inspection, the need for the inspection must be balanced against the invasion which the search entails. (Camara v. Municipal Court; see also Morris v. United States Department of Labor (S.D. Ill. 1977), 439 F. Supp. 1014.) The Camara court added that a valid public interest would justify issuance of a suitably

restricted warrant.

The public interest asserted by the government is the protection of the health and safety of consumers through regulations such as approved sources of food supplies and storage procedures to prevent contamination of food products. The scope of the intrusion is limited by the Code to areas where there is food production or storage. The record disclosed that the search was initially made pursuant to a computer listing which named all food establishments in Chicago. At the hearing, Inspector Colletti stated that defendants had been issued a license to operate a food establishment in 1979 and 1980. Colletti noted, however, that the defendant's license had been suspended in 1980 for unsanitary conditions and had never been reinstated. Colletti further testified that defendants were still operating the food establishment. The search warrant was then issued over

defendants' objections.

The record reveals that the inspection was initially attempted pursuant to an administrative plan to ensure compliance with Code regulations and therefore not arbitrary. Defendants' refusal to permit entry at that time prompted the need to apply for a warrant. It would appear that the court considered the allegations presented at the hearing to have been sufficient for probable cause under the circumstances and we find no error in that ruling.

Defendants next contend that it was reversible error for the trial court to deny them appointed counsel to assist in their defense. Defendants argue that there was no voluntary and knowing waiver of counsel, but that they in fact made it clear throughout the proceedings that they wanted legal assistance. Defendants further argue that they were not given the opportunity to fill out an

affidavit of assets and liabilities in order to secure the services of a public defender.

The City asserts, however, that the sixth amendment does not obligate courts to furnish counsel for indigent defendants in quasi-criminal actions where there is no possibility of imprisonment. (City of Danville v. Clark, (1976), 63 Ill. 2d 408, 348 N.E.2d 844, cert. denied, (1976), 429 U.S. 899, 50 L.Ed.2d 184, 97 S.Ct. 266.) The City further argues that it was through defendants own actions that the requisite affidavit for establishing indigency was not completed.

The constitutional right to appointed counsel is limited to criminal proceedings which result in actual imprisonment (Argersinger v. Hamlin (1972), 407 U.S. 25, 32 L.Ed.2d 530, 92 S.Ct. 2006; see also Scott v. Illinois (1979), 440 U.S. 367, 59 L.Ed.2d 383, 99 S.Ct. 1158), and the statutory right to counsel is similarly limited. (See

Ill.Rev.Stat. 1981, ch. 38, pars. 103-4, 113-3(b); ch. 34, par. 5604.) The issue of an indigent defendant's right to appointed counsel in a prosecution for violation of municipal ordinances has not been ruled upon by the courts of this State. The determination of whether a party is entitled to appointed counsel, however, is a matter within the trial court's discretion which must be delicately decided always with a mind toward protection of the indigent party from any possible impairment. See People v. Whiteny (1974), 24 Ill.App.3d 685, 321 N.E.2d 317.

In the instant case, the record is replete with instances where the various trial judges who participated in this matter admonished both defendants of their need for counsel. The record indicates that defendants failed and refused to comply with the eligibility requirements for appointment of counsel by not supplying the requisite informa-

tion regarding their financial situation. The record also shows that the trial court made attempts to ascertain the indigency of defendants, but defendants refused to cooperate in the court's inquiry. The trial court, in a further attempt to determine defendants' financial situation, requested that defendants complete the requisite affidavit for appointment of a public defender. Again, defendants failed to cooperate with the court by choosing not to complete the form. Since defendants failed and refused to supply the basic information required to support their request for court appointed counsel due to their indigency, the court was justified in refusing to appoint a public defender or other counsel to assist defendants in their defense.

Defendants next contend that the cumulative effect of trial court errors deprived them of their due process right to a fair trial. The

errors enumerated in defendant's brief amount to an allegation that the rules of evidence were not strictly followed. Defendants argue that the errors would not have occurred had they been represented by counsel. The City counters by asserting that errors of which defendants complain have been waived for failure to include them in their post-trial motion.

Generally, the failure by a defendant to raise an issue in his post-trial motion constitutes a waiver of that issue and cannot be urged as a ground for reversal on review. (People v. Pickett, (1973), 54 Ill.2d 280, 296 N.E.2d 856.) Rule 615(a) (Ill.Rev.Stat. 1981, ch. 110A, par. 615(a)) provides that a reviewing court may consider issues which amount to plain error affecting substantial rights although the issues were not included in the defendant's post-trial motion.

After examining the record before us, we are

not persuaded that the alleged errors are plain errors affecting defendants' right to a fair trial and we see no reason to depart from the general rule that issues not properly preserved for review are waived.

Defendants also contend that the trial court erred in denying their motion for mistrial which they based upon an allegation of jury contamination. Defendants agrue that the trial court failed to adequately investigate the defendants' charge that the City's main witness was conversing and laughing with the deputy sheriff in the presence of the jury during a side bar.

The decision whether or not to grant a mistrial rests within the sound discretion of the trial court based upon the particular circumstances of the case. (Benuska v. Dahl (1980), 87 Ill.App.3d 911, 410 N.E.2d 249.) A mistrial should be declared only as the result of some occurrence of

such character and magnitude that a party is deprived of its right to a fair trial. (Benuska v. Dahl; Needy v. Sparks, (1977), 51 Ill.App.3d 350, 366 N.E.2d 327.) The moving party must demonstrate actual prejudice as a result of the ruling or occurrence. (Williams v. Board of Education (1977), 52 Ill.App.3d 328, 367, 367 N.E.2d 549.) Finally, the trial court's ruling on a motion for mistrial will not be disturbed on review absent a clear abuse of discretion. Stuart v. Rahn (1974), 16 Ill.App.3d 315, 306 N.E.2d 66.

The record reveals that immediately after defendants brought the allegation of jury contamination to the attention of the court, the court called for a side bar with both defendants, the prosecutor, Colletti and the deputy sheriff participating. Thereafter, the court denied defendants' motion for mistrial. Later in the trial, Donald Warden, a spectator, testified that he ob-

served Colletti and the deputy sheriff conversing and laughing while a side bar was taking place. The court then conducted a voir dire of the jurors and alternates individually. The court asked each juror and alternate essentially the following question:

> "There's been an allegation that on Tuesday morning when court and the defendant and the prosecutor and the court reporter were in chambers here discussing a legal matter, the deputy sheriff and the first witness Mr. Colletti were talking and laughing in the presence of the jury. Do you remember such an incident?"

On the basis that thirteen of the jurors said they did not remember such an incident, and the one juror who said: "That I'm not sure," the court again denied the defendant's motion. Apparently,

the court was satisified after conducting the voir dire that no prejudice to defendants had occurred. We are not persuaded that the court acted improperly in attempting to ascertain whether or not there had been jury contamination.

Defendants' next contention is that they are entitled to the return of two firearms which were seized by police during the City's inspection of defendants' business. The record reveals that the weapons were seized from defendants' upstairs living quarters. At trial, the court granted the motion to suppress the firearms. Thereafter, pursuant to a request from an assistant state's attorney who was assigned to that courtroom, the court issued an order to confiscate and destroy the weapons. In denying defendant's motion for a new trial, the court stated:

> "As far as the return of your weapons sir, I did suppress those weapons. As

far as evidence being presented in your case, there was an order to confiscate and destroy. Your legal remedy would be a civil action in replevin to recover those weapons. I would tell you had you been registered properly with all the authorities, I would have returned those weapons to you."

The record is clear in this case that defendants filed a timely motion for return of their weapons at the conclusion of the trial. The court denied the motion and directed defendants to seek relief in civil court. In People v. Jackson (1975), 26 Ill.App.3d 845, 849, 326 N.E.2d 138, 141, a case in which defendant was similarly directed by the court to seek the return of his revolver in civil court, the court stated:

"We perceive no justification for the imposition of such a procedural

> burden * * *. The unmistakeable trend of recent court procedures is to avoid the duplication of legal controversies when a disposition of the subject matter and personal property before the court court can be made conveniently."

We believe the holding in Jackson is applicable to the case at bar. There was no adequate showing as to why the trial court should not have conducted a hearing on this issue in light of the fact that the weapons were seized during the inspection by the City. We do not favor the splitting of cases in instances, such as this, where all the necessary evidence to decide the matter is before the trial court. Accordingly, we reverse the order of the trial court which denied the defendants' motion seeking return of their weapons and direct the circuit court to conduct a hearing as to the merits of the issue.

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Defendants finally ask this court to vacate the conviction of Walter J. Pudlo for violation of Chapter 130, section 9 of the Code since he was never charged with that violation. In view of the fact that the City confesses error as to this particular conviction, the conviction is hereby vacated.

For the foregoing reasons, that part of the circuit court's judgment based on the motion for return of defendants' weapons is reversed and remanded with directions. Additionally, the con- ~~victions~~ conviction of Walter J. Pudlo is vacated and in all other respects, the judgment of the circuit court is affirmed.

Judgment affirmed in part; vacated in part; reversed and remanded with directions.

BUCKLEY, P.J., and MCGLOON, J., concur.

App. B

First District
Filed May 7, 1984

No. 82-2256

CITY OF CHICAGO, a municipal corporation,	)	APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY
Plaintiff-Appellee,	)	
vs.	)	
THADDEUS PUDLO, and WALTER J. PUDLO,	)	HONORABLE PETER GEORGES, PRESIDING
Defendants-Applellants.	)	

JUSTICE CAMPBELL upon denial of defendants' petition for rehearing, delivered the supplemental opinion of the court:

Susbsequent to the filing of this opinion, defendant Thaddeus Pudlo filed a petition for rehearing urging, inter alia, that this court specifically address the issue whether warrantless searches of food establishments under section 130-9 of the Muncipal Code of Chicago, (Chicago, IL., Municipal Code (1980), ch. 130 sec. 9), are constitutional. We have reconsidered the issue

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and, in order to give full consideration to the points raised by defendant, the City was requested to file an answer thereto, and defendant was allowed to file a reply, and despite the fact that the inspection in this case was conducted pursuant to a warrant, we now address the issue.

Defendant argues that section 130-9 is unconstitutional in that it violates the Fourth Amendment of the United States Constitution which requires a warrant for inspections of commercial premises which are not within a "pervasively regulated business." (United States v. Biswell (1972), 406 U.S. 311, 316, 32 L.Ed.2d 87, 92, 92 S.Ct. 1593; 1596; see also Donovan v. Dewey (1981), 452 U.S. 594, 69 L.Ed.2d 262, 101 S.Ct. 2534.) Defendant claims that the food industry is not within the exception to the warrant requirement and therefore the ordinance is unconstitutional and his conviction thereunder must be

82-2256

vacated. In its response to the petition for rehearing, the City argues that warrantless searches of food establishments under the Code are constitutional and therefore defendant's conviction should not be vacated. We agree.

At the outset we note that at oral argument counsel for defendant alleged that defendant's food establishment was not open to the public. This allegation was not clearly presented by defendant as a basis for contending that a warrant was required to inspect defendant's premises. Nevertheless, the record before this court supports the contrary. At trial, two witnesses, John Sharkey, a Consumer Services officer, and John R. Colletti, a Consumer Services inspector, each testified that they observed members of the public going to and from the premises carrying packages. On the basis of this evidence, the jury could have found that defendant's food establishment was open

to the public and thus subject to public inspection.

In the cases, United States v. Biswell and Colonnade Cartering Corp. v. United States, (1970), 397 U.S. 72, 25 L.Ed.2d 60, 90 S.Ct. 774, the Supreme Court ruled that businesses dealing with firearms or liquor were subject to warrantless inspections. (See also Daley v. Berzanskis (1971), 47 Ill.2d 395, 269 N.E.2d 716, cert. denied (1971), 402 U.S. 999, 29 L.Ed.2d 166, 91 S.Ct. 2173.) These two cases upheld statutorily authorized warrantless searches and became known as the Biswell-Colonnade exception. The rationale behind the Biswell-Colonnade exception is implied consent. By accepting the benefits of a trade which is closely regulated, the business person also accepts the burden of such regulation and thereby impliedly consents to warrantless inspections. (Almeida-Sanchez v. United States (1973),

413 U.S. 266, 37 L.Ed.2d 596, S.Ct. 2535.) The Supreme Court also noted that some regulatory statutes "apply only to a single industry, where regulations might already be so pervasive that a Colonnade-Biswell exception to the warrant requirement could apply." (Marshall v. Barlow's, Inc. (1978), 436 U.S. 307, 321, 56 L.Ed.2d 305, 317, 98 S.Ct. 1816, 1825.) The Court added that the reasonableness of a warrantless search provision in a regulatory statute "[would] depend upon the specific enforcement needs and privacy guarantees of each statute." Barlow's, 436 U.S. 307, 321, 56 L.Ed.3d 305, 317, 98 S.Ct. 1816, 1825.

We must therefore consider whether the food industry is one in which regulations are so pervasive that subjecting businesses within the industry to warrantless inspections would be constitutional. The parties have not offered, nor has our research revealed any Illinois cases on

this issue. Therefore, an examination of cases from other jurisdictions will be helpful. One such representative case is United States v. New England Grocers Supply Co. (D. Mass. 1980), 488 F.Supp. 230.) In New England Grocers, defendants were convicted of causing certain food stuffs to become adulterated while being held for sale after shipment in interstate commerce. Defendants attacked the constitutionality of a federal statute which, like the one in the instant case, authorized the warrantless administrative search of their warehouse. The district court upheld the constitutionality of the search noting "the pervasive nature and long history of federal regulation of the food and drug industry, * * * and * * * the urgent public health interests that are served by the inspections." (New England Grocers, 488 F. Supp. 230, 238.) With regard to the public health interests, the district court adopted the

following statement by the court in United States v. Business Builders, Inc. (N.D. Okla. 1973), 354 F. Supp. 141, 143:

> "It would be an affront to common sense to say that the public interest is not as deeply involved in the regulation of the food industry as it is in the liquor and firearms industries. One need only to call to mind recent cases of deaths occurring from botulism. Modern commerce has devised such an efficient and rapid means of distribution of food products to the comsumer that a batch of contaminated food may cause widespread illness and death before the public can be warned and the contaminated products removed from the market."

Other jurisdictions have similarly determined that

warrantless administrative searches of establishments within the food industry are constitutional. See cases cited in New England Grocers, 48 F.Supp. 230, 238; contra United States v. Roux Laboratories, Inc. (M.D. Fla. 1978), 456 F.Supp. 973.

We agree with the reasoning of the court in the New England Grocers and the Business Builders cases. Defendant's argument that the regulation of the food industry in Chicago is somehow less important or less necessary than regulation of the firearms or liquor industries is untenable. The food preparation industry in Chicago is heavily regulated by ordinance. Regulations in chapter 130-6.4 of the Code (Chicago, IL., Municipal Code (1980), ch. 130, sec. 6.4) govern the entire industry from requiring approval for sources of supply, to specifying precautions to be taken to prevent contamination. Further, the Code incorporates by reference the federal standards for

wholesomeness and sanitation within the industry. That there has been long-standing regulation of the food industry, and that such regulation is a necessary and proper function of the government's police power to protect the welfare of its citizens cannot be contradicted. As noted by our supreme court in Daley v. Berzanskis (1971), 47 Ill.2d 395, 269 N.E.2d 716, cert. denied (1971), 402 U.S. 999, 29 L.Ed.2d 166, 91 S.Ct. 2173, a case in which the warrantless inspection of liquor businesses was held constitutional:

> " * * * any restriction or requirement such as consent to a warrantless search, which is necessary to protect public health, safety and morals, is a reasonable exercise of the police power of the State."

Therefore, we hold that based on the long-standing and pervasive reulation of the food industry and

mindful of the great public interest served by such regulation, section 130-9 of the Municipal Code, which authorizes the warrantless inspections of food establishments within the City of Chicago is not unconstitutional for any of the reasons assigned by defendant.

This is not to say the the food industry is subject to the unfettered discretion of the City inspectors. The Code is specific in limiting the inspections to reasonable times, to the inspection only of the books and records of the business, and to the inspection only of areas where food preparation or storage are conducted.

Defendant's petition for rehearing also requests a re-evaluation of this court's decision on all of the remaining issues raised on appeal. Because defendant's various contentions were considered by us in rendering our opinion, we see no purpose to be served in reconsidering those

issues. Therefore, defendant's request is denied.

Accordingly, the decision of the circuit court finding defendant guilty of violating section 130-9 of the Code is affirmed.

Judgment affirmed.

BUCKLEY, P.J., and McGLOON, J., concur.

App. C

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62704
(217) 782-2034

October 2, 1984

Mr. Dennis M. Doherty
Attorney at Law
35 E. Wacker Dr., #3500
Chicago, IL. 60601

No. 60293 - City of Chicago, etc., respondent, vs. Thaddeus Pudlo, et al., (Thaddeus Pudlo, petitioner). Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Clerk of the Appellate Court on October 23, 1984.

App. D

MORGAN FINLEY, CLERK OF THE CIRCUIT
COURT OF COOK COUNTY

81 - MC1-102039

STATE OF ILLINOIS) ss.
COUNTY OF COOK)

THE CIRCUIT COURT OF COOK COUNTY
COMPLAINT FOR SEARCH WARRANT

J.R. COLLETTI complainant now appears before the undersigned judge of the Circuit Court of Cook County and requests the issuance of a search warrant to search the premises of Thaddeus Pudlo d/b/a Pudlo Food Products, 1651 West Hubbard St., Chicago, IL. for the purpose determining whether Thaddeus Pudlo, d/b/a Pudlo Food Products has a license to conduct a wholsale food establishment, under Chapter 130, section 6.1 and to conduct a food inspection and premises inspection as required under Chapter 130 of the Municipal Code of the City of Chicago which have been used in the commission of, or which constitute evidence of the offense of not having a Wholesale Food License and

probable other offenses under Chapter 130 of the Municipal Code of Chicago.

Complainant says that he has probable cause to believe, based upon the following facts, that the above listed things to be seized are now located upon the (person and) premises set forth above:

That Thaddeus Pudlo, d/b/a Pudlo Products refused entry to the premises to John R. Colletti and John Sharkey of the Department of Consumer Services, Food Processing Section, proper credentials were exhibited, stating that a Search Warrant should first be obtained.

John R. Colletti,
Complainant

Subscribed and sworn to before me on July 15, 1981.

/s/ Eugene R. Ward
Judge

The Search Warrant (C-7 & C-46) read as follows:

MORGAN M. FINLEY
Clerk of Court

81 - MC1-102039

STATE OF ILLINOIS) ss.
COUNTY OF COOK)

THE CIRCUIT COURT OF COOK COUNTY

The People of the State of Illinois to all peace officers of the state.

CITY OF CHICAGO, a municipal Corporation

SEARCH WARRANT

On this day J.R. Colletti, Complainant has subscribed and sworn to a complaint for search warrant before me. Upon examination of the complaint, I find that it states facts sufficient to show probable cause.

I therefore command that you search the premises of Thaddeus Pudlo d/b/a Pudlo Food Products, 1651 West Hubbard Street, Chicago, Illinois and determine whether a 1981 Wholesale Food Establishment License is needed and if one has been obtained from the City of Chicago and if any violations

have been committed under Chapter 130 of the Municipal Code and that John R. Colletti and John Sharkey accompany the Peace Officer for the purpose of the inspection, which have been used in the commission of or which constitutes evidence of the offense of not having a Wholesale Food License and probable other offenses under Chapter 130 of the Municipal Code of Chicago.

I further command that a return of anything so seized shall be made without necessary delay before me or before Judge _____, or before any court of competent jurisdiction.

/s/ Eugene R. Ward

Judge

Time and date of issuance 3:20 p.m. on July 15, 1981